BANKRUPTCY—JURISDICTION—ENFORCING WAIVER OF EXEMPTIONS.—LOCKWOOD V. EXCHANGE BANK OF FORT VALLEY ET AL., 10 AM. B. R. 107; 190 U. S. 294.—A bankrupt's promissory notes contained a written waiver, as authorized by the laws of the State, of all right of homestead exemption. *Held,* that the bankruptcy court has no jurisdiction to enforce the rights of holders of the notes having no lien.

Under the Act of 1867 it was held that the court of bankruptcy had no jurisdiction over exempt property other than to hear and determine the claims of the bankrupt, if disputed. The decision of all questions as to property which had been adjudged exempt, including the results of a waiver, was to be left to the State courts. *In re Bass,* 3 Woods 382. Under the Act of 1898 it has been held in the district court that the bankruptcy court would take jurisdiction to enforce a waiver, even in the absence of a lien. *In re Woodruff,* 96 Fed. 317. But it has also been held that the jurisdiction of the bankruptcy court over exempt property concerns only its being set aside. *In re Jackson,* 116 Fed. 46; *In re Hatch,* 102 Fed. 280; *In re Seydel,* 118 Fed. 207. In the principal case it is decided by the United States Supreme Court that under the act of 1898 that rule holds which was laid down with regard to the earlier act. For the remedy of the creditor, see *In re Ogilvie,* 5 Am. B. R. 374.

CONTRACT OF SERVICE—QUANTUM MERUIT—RECOVERY.—WAGNER V. EDISON ELECTRIC ILLUMINATING CO., 75 S. W. 966 (Mo.).—In complying with an ordinance requiring all electric wires to be placed underground, several companies acted jointly through a committee. This committee elected one of its members as engineer for the work. *Held,* that, although the engineer was a member of the committee, he could recover on the *quantum meruit* for services rendered as supervising engineer. Robinson, C. V., Gault, V., *dissenting.*

No decision is found directly in point. Bank directors, acting outside of their usual official duties, have been granted compensation where the evidence raised a fair presumption that such was the intention of the parties. *Plu v. First Nat. Bank,* 130 Mass. 391; *Ward v. Polk,* 70 Ind. 309. The rule was applied to railroad directors and trustees n *Cheeney v. Ry. Co.,* 68 Ill. 570, and to corporation presidents in *Santa Clara Mining Ass'n. v. Meredith,* 49 Md. 389. We see no reason why the doctrine should not control the case in question. *Fitzgerald, etc., Co. v. Fitzgerald,* 137 U. S. 98.

FRAUDULENT DEBTOR—NECESSARY PARTIES.—SCHNEIDER V. PATTON ET AL., 75 S. W. 155 (Mo.).—*Held,* that in an action by a judgment creditor against a fraudulent grantee to set aside a conveyance of real estate made by the judgment debtor, the judgment debtor is not a necessary party.

The law is unsettled on the point, although there are but few decisions in direct conflict. On the ground that the conduct of the judgment debtor is to be investigated, *Bump, Fraud. Con.* (1st ed.), 522, has considered him a "necessary party" to the suit. The rule is not well supported and is modified in the 3d ed. of the same work, 548, to read "proper party." See also *Story, Eq. Pl.* (4th ed.), 196. The debtor was held a necessary party in *Lawrence v. Bank,* 35 N. Y. 320; *Lovejoy v. Ireland,* 17 Md. 535; a proper party in *Gaylord v. Kelshaw,* 1 Wall. 82; *Birdwell v. Butler,* 13 Tex. 338; and not a necessary party defendant in *Leach v. Shelby,* 58 Miss. 681; *Potter*

v. Phillips, 44 Iowa 353. The tendency of the law is towards the ruling of this court. *Taylor v. Webb,* 54 Miss. 42; *Laughton v. Harden,* 68 Me. 208.

INSOLVENCY—PREFERENCES—RIGHTS OF CREDITORS.—POWERS-TAYLOR DRUG CO. v. FAULCONER ET AL., 44 S. E. 204 (W. VA.).—An insolvent debtor, with intent to prefer certain of his creditors, sold his property to a third party who was cognizant of the facts. The proceeds of the sale were paid to the preferred creditors. *Held,* that such sale was not fraudulent in fact. An intent to prefer is insufficient to establish a fraudulent intent. McWhorter, P., and Dent, J., *dissenting.*

There is a distinction between the effect of a transfer by a debtor in failing circumstances and an intent to hinder, delay or defraud his creditors. If the intent is to defraud, a valuable consideration will not save the transfer. *Gans v. Renshaw,* 2 Barr (Pa.) 36. The statute of 13 Eliz. is aimed only at intended fraud. *Bank v. Carter,* 38 Pa. 453. Without clear proof of fraud the sale is valid. *Meade v. Smith,* 16 Conn. 346; *Kirkland v. Snow,* 20 Conn. 23. The burden of proof rests upon the creditor impeaching the preference. *Glen v. Grover,* 3 Md. 212; *Johnson v. McGrew,* 11 Iowa 151. The fact that the debtor was about to abscond was held in *Garr v. Hill,* 9 N. J. Eq. 210, not to invalidate the sale. A secret motive for preference is immaterial, *Bun v. Ahl,* 21 Pa. 387, but the law will not tolerate any form of trust to the benefit of the debtor. *Johnson v. Whitwell,* 24 Mass. 71; *Dalton v. Currier,* 40 N. H. 237. If the debtor contrives that other creditors shall never be paid this is not a *bona fide* preference and the transfer may be set aside. *Drury v. Cross,* 7 Wall. 299; *James v. Ry. Co.,* 6 Wall. 752; *Gorden v. Clapp,* 113 Mass. 335; *Smith v. Schwed,* 9 Fed. 483.

JUDGMENT—WANT OF JURISDICTION—SERVICE OBTAINED BY TRICK.—FRAWLEY, BUNDY & WILCOX v. CASUALTY CO., 124 FED. 259.—*Held,* that a service of summons obtained by fraud is invalid and the defendant is not bound by a judgment rendered thereon.

Service obtained by fraud is invalid. *Williams v. Reed,* 29 N. J. L. 385. And the one upon whom it is made may have an action therefor. *Wanger v. Bright,* 52 Ill. 35. But it would seem that, if the service is in behalf of one not a party to a fraud, it will be good. *Nichols & Co. v. Goodheart,* 5 Ill. Ap. 574; *Adriance v. La Grave,* 59 N. Y. 110; though the principle of this ruling is doubted. *Alderson, Jud. Writs, 272.* But if the one upon whom the fraudulent service is made enters a plea, the irregularity is waived, *Manhard v. Schott,* 37 Mich. 234; *Gilson v. Powers,* 16 Ill. 355; even though a motion to dismiss the suit has been made and overruled. *Peters v. R. Co.,* 59 Mo. 406; *Gorner v. Slate,* 8 Blackf. 567. If judgment goes against the plaintiff by default, some cases hold that it cannot be collaterally attacked. *Shee v. La Grange,* 78 Iowa 101; *McMullen v. State,* 105 Ind. 334. Other courts, when suit is brought on the judgment, treat it as void. *Wood v. Wood,* 78 Ky. 624; *Dunlap & Co. v. Cody,* 31 Iowa 260. And this better accords with the rule that the judgment of a court which has no jurisdiction is void. 1 *Black, Jud.,* 218.

MASTER AND SERVANT—BLACKLIST—BOYER v. WESTERN UNION TEL. CO., 124 FED. 246.—*Held,* that an employer, having discharged employes for belonging to a labor union, has the right to enter the reason of their discharge